

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1164 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MANSUKH N VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MR GIRISH PATEL for Petitioner
MR DA BAMBHANIA for Respondent No. 1
SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.S.SHAH

Date of decision: 23/12/96

ORAL JUDGEMENT

Admitted. Mr. D.A. Bambhania, learned AGP, waives service on behalf of the respondents. In the facts and circumstances of the case, the appeal is taken up for final hearing today.

This appeal is filed against an order passed by the learned single Judge on August 9, 1996 dismissing Special Civil Application No. 5796 of 1996.

Shortly stated the facts are that on December 9, 1983, the appellant was appointed as Deputy Director of Information which is a Class-I post. Appointment was ad-hoc and probationary. The services of the appellant came to be terminated by an order dated October 12, 1988. Being aggrieved by that action, the appellant has approached this Court by filing Special Civil Application No. 1870 of 1988 which is pending. It is, however, not necessary for us to state anything more since in the present proceedings, we are not concerned with that action.

It appears that, during pendency of that petition, the appellant came to be reappointed as Deputy Director of Information by an order dated December 14, 1990. In accordance with the Gazetted Officers' (Pre-Service Training and Examination) Rules, 1970, (hereinafter referred to as 'Rules') the appellant had to clear pre-service training and examination ('examination' for short) within stipulated period and stipulated chances. It is the case of the department that the appellant was obliged to clear the examination within three chances. The appellant had not cleared the said examination within the stipulated chances and, hence, his services came to be terminated by an order dated August 17, 1995. It is also the case of the department that, in accordance with Rules, an additional chance could be afforded to a government servant to appear at the examination, which was also availed by the appellant in 1996 and even at that examination the appellant failed. Thus, the appellant had exhausted all the chances under the Rules and he cannot make any grievance against such action.

The appellant, on the other hand, contended that he had availed of only three chances including the examination of 1996 and he can be granted an additional chance, i.e. fourth chance, which has not been given to him. The impugned action of the department is, therefore, illegal. It is contended that the services of the appellant were not terminated in accordance with law and the petition filed by him ought to have been allowed by the learned single Judge.

Now, looking to the order of termination dated August 17, 1995, it appears that, as per the case of the

department, by that time, the appellant had exhausted all the four chances. It was stated that in December 1991, the appellant appeared at the examination and failed. This position is not disputed by Mr. Patel, learned counsel for the appellant. The second chance, which is referred in the said order, is of June 1992. It is mentioned in the order that the appellant had remained absent and hence it was considered to be a chance. Relying upon a letter dated September 29, 1994 (Annexure "C" to the petition), Mr. Patel contended that the appellant could not appear at the examination because of his sickness. An opinion was sent to the department and the Government had also agreed to that position and, accordingly, it was held that that chance was not to be treated as chance and that chance could not have been taken into account by the department. The third chance which was referred to in the order is of October 1992. Mr. Patel contended that that chance could not have been taken into account in view of the fact that the appellant was not given even the seat number and, therefore, he could not have appeared at the examination. For the said purpose, reliance was placed on a letter written by Sardar Patel Institute of Public Administration dated May 1, 1995. In paragraph 3, it was specifically mentioned that during the examination between October 21, 1992 and October 21, 1993, Mr. Waghela (appellant) was not allotted seat number at the said examination. In our opinion, therefore, the said examination could not have been treated as a chance against the appellant. It is, thereafter, in dispute that the appellant was given chance and he appeared at the examination held in January 1995 wherein he failed. Similarly in 1996, he appeared and failed. At the last examination, out of five papers, the appellant secured the following marks:

50 - 77 - 58 - 64 - 35

It is stated at the bar that the passing standard is 50 marks. Thus, though the appellant had obtained more than 50 marks in four papers, he could not clear the last paper in which he had obtained only 35 marks. Though aggregate is more than 50%, in view of the fact that independently he did not clear the 5th paper, he was not declared as successful.

A number of contentions have been raised by the learned counsel for the appellant. It was also submitted that the authorities could not have terminated the service of the appellant in 1995 when the appellant had not exhausted all the three chances. According to Mr. Patel, the appellant had availed of only two chances, namely, December 1991 and January 1995. In view of the fact that the services of the appellant were already

terminated and the appellant had obtained marks in the 1996 examination referred to hereinabove, without expressing final opinion one way or other, in our opinion, ends of justice would be met if, taking into consideration that the appellant had exhausted only three chances, we grant liberty to the appellant to make a representation and/or application to the appropriate authority for giving him an additional chance which would be fourth chance in accordance with law and direction is issued to the appropriate authority to consider the said application in light of the peculiar facts and circumstances referred to hereinabove and to decide the said application as expeditiously as possible. If the appellant will make an application on or before January 16, 1997, the respondent authorities will decide the said application and take an appropriate decision thereon within four weeks from the date of receipt of the application.

The appeal is, accordingly, partly allowed.
There shall be no order as to costs.

(swamy)